# CMS Guidance Document	**Department of Health & Human Services (DHHS)**
Pub 100-04 Medicare Claims Processing	**Centers for Medicare & Medicaid Services (CMS)**
Executive Guidance Number 0631	**Date: December 4, 2008**
Planned Web Site Address http://www.cms.hhs.gov/manuals/	**Release planned: 12/18/08**

PROGRAM AREA: Claims Processing

SUBJECT: Moratorium on Classification of Long-Term Care Hospitals (LTCH) or Satellites/Increase in Certified LTCH Beds

APPLIES TO: Medicare Medicaid State Children's Health Insurance Program Extension Act

I. SUMMARY OF DOCUMENT: Section 114 of the Medicare Medicaid State Children's Health Insurance Program Extension Act (MMSEA) (Pub. L. 110-173), enacted December 29, 2007, establishes a number of provisions affecting long-term care hospitals (LTCH). Section 114(d)(1) establishes a 3-year moratorium on the designation of new LTCHs or LTCH satellites, and on an increase of beds in a LTCH. The moratorium began on December 29, 2007, and ends on December 28, 2010.

Sections 114(d)(2) and (d)(3) of MMSEA provide for limited exceptions to the moratorium. CMS implemented these exceptions in a final rule with comment published in the Federal Register on May 22, 2008. This Change Request provides detail on how to apply the exceptions to the moratorium.

II. CHANGES IN POLICY INSTRUCTIONS: (If not applicable, indicate N/A)
STATUS: R=REVISED, N=NEW, D=DELETED.

Status	**CHAPTER/SECTION/SUBSECTION/TITLE**
N/A	

III. CLEARANCES:

Clearance & Point of Contact (POC)	**Name/Telephone/Component**
Senior Official Clearance	Jeffrey Rich/CMS/Director/CMM/410-786-4164
Agency POC	Taimyra Jones/CMS/CMM/HAPG/DAC/410-786-1562

IV. TYPE (Check appropriate boxes for type of guidance)

	Audit Guide
X	**Change Request**
	HPMS
	Joint Signature Memorandum/Technical Director Letter
	Manual Transmittal/Non-Change Request
	State Medicaid Director Letters
	Other

V. STATUTORY OR REGULATORY AUTHORITY: Section 114 of the Medicare Medicaid State Children's Health Insurance Program Extension Act (MMSEA) (Pub. L. 110-173)

Attachment – One-Time Notification

Pub. 100-20	Transmittal:	Date:	Change Request: 6172

SUBJECT: Moratorium on Classification of Long-Term Care Hospitals (LTCH) or Satellites/Increase in Certified LTCH Beds

Effective Date: December 29, 2007

Implementation Date: 30 days from issuance

I. GENERAL INFORMATION

A. Background: Section 114 of the Medicare Medicaid State Children's Health Insurance Plan Extension Act (MMSEA) (Pub. L. 110-173), enacted December 29, 2007, establishes a number of provisions affecting long-term care hospitals (LTCH). Section 114(d)(1) establishes a 3-year moratorium on the designation of new LTCHs or LTCH satellites, and on an increase of beds in a LTCH. The moratorium began on December 29, 2007, and ends on December 28, 2010.

B. Policy: Section 114(d)(2) of the MMSE Act (Pub. L. 110-173)

For hospitals that are seeking to be excluded from the Inpatient Prospective Payment System for the first time as a LTCH, under the existing regulations at §412.23(e)(1) and (e)(2)(i), which implement Section 1886(d)(1)(B)(iv)(I) of the Social Security Act, such hospitals must have a provider agreement with Medicare and must have an average Medicare inpatient length of stay (LOS) greater than 25 days. The FI or MAC, as applicable, will verify whether the hospital meets the average LOS requirement.

Sections 114(d)(2) and (d)(3) of MMSEA provide for exceptions to the moratorium imposed by Section 114(d)(1) of MMSEA. It is important to note that the two categories of exceptions are mutually exclusive. The three exceptions specified in Section 114(d)(2) of MMSEA, discussed below, are only applicable to the establishment and classification of a LTCH or LTCH satellite facility; they do not apply to the moratorium on an increase in beds at Section 114(d)(1)(B) of MMSEA. Similarly, the exception at Section 114(d)(3)(A) of MMSEA only applies to the moratorium on increases in beds at existing LTCHs or LTCH satellites facilities, and not to the moratorium on the establishment of LTCHs and LTCH satellite facilities.

1. Establishment and Classification of a LTCH or LTCH Satellite

In accordance with Section 114(d)(2), the moratorium on the *establishment* and classification of a LTCH or LTCH satellite facility does not apply to a LTCH that, as of December 29, 2007, met one of the following three exceptions:

a. The LTCH began "its qualifying period for payment as a long-term care hospital under Section 412.23(e) of title 42, Code of Federal Regulations, on or before the date of enactment of this Act Section 114(d)(2)(A)). This exception applies to an existing hospital that began its qualifying period for LTCH status on or before December 29, 2007. To qualify for this exception to the moratorium, the LOS data used to demonstrate that the hospital has met the average LOS requirement at 42 CFR 412.23 must be from its cost reporting period that began on or before December 29, 2007. Note that a LTCH satellite may not qualify for this exception, since there is

no "qualifying period" for the establishment of a satellite facility for payment as a LTCH under 42 CFR 412.23(e).

b. As of December 29, 2007, the LTCH has a binding written agreement with an outside, unrelated party for the actual construction, renovation, lease, or demolition for a LTCH and has expended, prior to December 29, 2007, at least 10 percent of the estimated cost of the project or, if less, $2,500,000 (Section 114(d)(2)(B)). This exception applies in the following three circumstances:

(1) As of December 29, 2007, an existing hospital (that is, one that was certified as a hospital as of December 29, 2007) that will become a LTCH has a binding written agreement with an outside unrelated party for the actual construction, renovation, lease, or demolition for converting the hospital to a LTCH and has expended, before that date, at least 10 percent of the estimated cost of the project or $2,500,000, whichever amount is less;

(2) As of December 29, 2007, an entity that will develop a hospital that will ultimately become a LTCH has a binding written agreement with an outside unrelated party for the actual construction, renovation, lease, or demolition of a hospital and that entity has expended, before that date, at least 10 percent of the estimated cost of the project or $2,500,000, whichever amount is less; or

(3) An existing LTCH, as of December 29, 2007, has a binding written agreement with an outside unrelated party for the actual construction, renovation, lease or demolition of a new LTCH satellite facility and the LTCH has expended before December 29, 2007, at least 10 percent of the estimated cost of the project or $2,500,000, whichever amount is less.

c. The LTCH has obtained an approved Certificate of Need (CON) in a State where one is required on or before December 29, 2007, (Section 114(d)(2)(C)). This exception applies to a hospital or entity that was actively engaged in developing a LTCH, as evidenced by the fact that either:

(1) An entity that wanted to create a LTCH, but did not exist as a hospital as of December 29, 2007, had obtained an approved CON for a hospital or LTCH, as applicable, on or before December 29, 2007. Depending on the State's CON law, there may or may not be a CON that is specifically for a long-term acute care hospital, as opposed to one for a general or short-term acute care hospital. If there is a CON that is specifically for a LTCH in the entity's State, then the entity must have been obtained an approved CON that is specifically for creation of a LTCH. If the State does not require a specific LTCH CON, then it is sufficient for the entity to have obtained an approved hospital CON on or before December 29, 2007, as long as it did not exist as a hospital by that date.

or

(2) A hospital that did exist as a hospital on December 29, 2007, had obtained an approved CON on or before December 29, 2007, to convert the hospital into a new LTCH, or an existing LTCH had obtained an approved CON by that date to create a satellite. This exception does not apply to an existing hospital that obtained an approved CON for a hospital type other than a LTCH on or before December 29, 2007. The fact that a hospital may have had a CON issued to it years before December 29, 2007, to operate a hospital would not be a reason to grant it an exception, unless that CON was specifically for a LTCH. In a State that does not require a specific CON for a LTCH type of hospital this exception is not available to any existing hospital.

2. Increase in the Number of LTCH Beds

In accordance with Section 114(d)(1)(B), an existing LTCH or LTCH satellite facility may not increase the number of beds in excess of the number of Medicare-certified beds at the hospital as of December 29, 2007. Section 114(d)(3) states that the moratorium on an increase in beds shall not apply if an existing LTCH or LTCH satellite facility is "located in a State where there is only one other long-term care hospital; and requests an increase in beds following the closure or the decrease in the number of beds of another long-term care hospital in the State." There is further statutory language about the intersection of this exception with "grandfathered" LTCH Hospitals within Hospitals (HwHs) as specified at 42 CFR 412.22(f) and LTCH satellite facilities as specified at 42 CFR 412.22(h)(3).

It is likely that there are a very limited number of cases that might meet the exception criteria for an increase in the number of certified LTCH beds. The ROs that receive a request for a bed increase from a LTCH in a State with more than two certified LTCHs are to deny the request. (Note that LTCH satellites are not considered separate LTCHs.) The ROs that receive a request for a bed increase in a state that has only two certified LTCHs are to consult with David Eddinger at the CMS' Central Office on the evaluation of the request.

II. BUSINESS REQUIREMENTS TABLE

Use"Shall" to denote a mandatory requirement

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A/B MAC	DME MAC	FI	CARRIER	RHHI	Shared-System Maintainers				OTHER
							FISS	MCS	VMS	CWF	
6172.1	FI/MAC shall review and evaluate the documentation concerning binding agreements/actual expenditures for projects under development.	X		X							
6172.2	FI/MAC shall recommend to the RO whether or not a provider qualifies for an exception, based either on having begun its qualifying period prior to December 29, 2007, or on having requisite binding agreements and evidence of expenditures prior to that date. For exceptions based on the qualifying period, the recommendation should include pertinent facts about the provider, including the provider's date of participation in the Medicare program. Recommendations based on a provider having requisite binding agreements and evidence of expenditures prior to that date should include a description of the materials reviewed by the FI/MAC which led to the particular recommendation.	X		X							
6172.3	When/if the provider eventually submits its complete application to CMS, FI/MAC must include the advance determination letter. It will not be necessary for the FI/MAC to conduct a new review of its eligibility for an exception to the moratorium.	X		X							

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A/B MAC	DME MAC	FI	CARRIER	RHHI	Shared-System Maintainers				OTHER
							FISS	MCS	VMS	CWF	
6172.4	Contractors shall post this entire instruction, or a direct link to this instruction, on their Web site and include information about it in a listserv message within 1 week of the release of this instruction. In addition, the entire instruction must be included in your next regularly scheduled bulletin. Contractors are free to supplement it with localized information that would benefit their provider community in billing and administering the Medicare program correctly.	X		X							

IV. SUPPORTING INFORMATION

Section A: For any recommendations and supporting information associated with listed requirements, use the box below:

Use "Should" to denote a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:
	N/A

Section B: For all other recommendations and supporting information, use this space:

V. CONTACTS

Pre-Implementation Contact(s): Judith Richter, ext. 62590.

Post-Implementation Contact(s): Judith Richter, ext. 62590.

VI. FUNDING

Section A: For *Fiscal Intermediaries (FIs), Carriers, and Regional Home Health Carriers (RHHIs)* use only one of the following statements:

Funding for implementation activities will be provided to contractors through the regular budget process. The additional funding will be specified as per MMSEA 2007.

Section B: *For Medicare Administrative Contractors (MACs)*, use the following statement:

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be

outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.